

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AGERE SYSTEMS, INC.,	:	
Plaintiff,	:	Civil Action
	:	
v.	:	
	:	
BROADCOM CORPORATION	:	No. 03-3138
Defendant.	:	

MEMORANDUM AND ORDER

SCHILLER, J.

July 23, 2003

Plaintiff Agere Systems, Inc. (“Agere”), a Delaware corporation with its principal place of business in Allentown, Pennsylvania and Defendant Broadcom Corporation (“Broadcom”), a California corporation with its headquarters in Irvine, California, are engaged in a patent dispute. On May 9, 2003, after substantial licensing negotiations, Broadcom filed suit in the Northern District of California alleging that Agere infringed four of its patents and seeking a declaration of non-infringement and invalidity of seven Agere patents. On May 16, 2003, Agere filed the instant action in this Court, alleging that Broadcom infringed six of its patents. Presently before this Court are Broadcom’s motions to transfer the action to the Northern District of California and to stay proceedings in this action pending a ruling on the transfer motion.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The burden of establishing the need for transfer rests with the movant. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995). “In ruling on defendants’ motion[s], the plaintiff’s choice of venue should not be lightly disturbed.” *Id.* (*quoting* 1A PT. 2 JAMES W. MOORE & BRETT A. RINGLE, FEDERAL PRACTICE ¶ 0.345[5], at 4360 (2d ed. 1995)). “In ruling on § 1404(a)

motions, courts have not limited their consideration to the three enumerated factors in § 1404(a) (convenience of parties, convenience of witnesses, or interests of justice), and, indeed, commentators have called on the courts to ‘consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum.’” *Id.* (citations omitted).

While it is true that “the presence of a related case in the transferee forum is a powerful reason to grant a change of venue,” *Blanning v. Tisch*, 378 F. Supp. 1058, 1061 (E.D. Pa. 1974), the patents at issue in each of the cases are not sufficiently related to warrant transfer. Agere contends that Broadcom infringed six of its patents. Two of the patents in this case and one of the patents in the California case involve trellis coating technology, yet these patents each have different inventors and different claim terms. Similarly, three of the patents in this case and three of the patents in the California case involve wireless technology. The wireless patents deal with widely divergent aspects of wireless technology and each have separate inventors. Broadcom conceded at oral argument that the courts “could manage to avoid a conflict” in judicial rulings relating to the wireless patents. (Tr. at 39.) Finally, while one of the patents in this case and one of the patents in the California case involve analog integrated circuit technology, these patents are directed to different aspects of this single technological area.

Indeed, at oral argument, Defendant conceded that there is no overlap in the patents among the two cases (Tr. at 7) and that the patents were for different products (Tr. at 38). One of my colleagues in this District has already denied a motion to transfer in a patent case notwithstanding related subject matter between suits in different fora because the two actions involved different patents. *See Surgical Laser Tech., Inc. v. Laser Ind., Ltd.*, Civ. A. No. 91-3068, 1991 WL 255827,

at *5, 1991 U.S. Dist. LEXIS at 12-13 (E.D.Pa. Nov. 27, 1991)(McGlynn, J.).

Defendant's position centers instead on the alleged greater efficiency of a single proceeding in a single forum, which it contends would eliminate duplication in tutorials and allow for grouping of the patents by subject matter to facilitate greater ease of understanding by the jury. (Tr. at 8-9.) In view of the differences among the patents at issue in each case, I am not persuaded that trying all of the claims in a single forum will result in efficiency gains at the level suggested by Defendant.

The remaining factors relevant to transfer disputes weigh in Plaintiff's favor. *See Jumara*, 55 F.3d at 879-80 (discussing private and public factors used by courts). The inventors of three of the six Agere patents at issue in this case are located in either New Jersey or Pennsylvania, while none reside in California. The prosecuting attorneys for four of the six Agere patents at issue in this case are located in either New Jersey or Pennsylvania. None are located in California. The relevant Agere documents are primarily located in the Eastern District of Pennsylvania.

Accordingly, I conclude that Defendant has not met its burden and deny Defendant's motion to transfer.¹ An appropriate Order follows.

¹ I only hope that the level of cooperation in these legal proceedings will improve. Despite the Court's encouragement, counsel for the parties failed to negotiate an amicable solution to the forum question, relying instead on letters to the Court.

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ORDER

AND NOW, this **23rd** day of **July, 2003**, upon consideration of the Motion to Transfer and the Motion to Stay by Defendant Broadcom Corporation, and the response thereto, and following oral argument on July 15, 2003, it is hereby **ORDERED** that:

1. Defendant's Motion to Transfer (Document No. 7) is **DENIED**.
2. Defendant's Motion to Stay (Document No. 6) is **DENIED as moot**.
3. A **Rule 16 conference** is set for **August 11, 2003 at 2:00 P.M.** in chambers, **Room 5614**. Counsel are directed to obtain copies of Judge Schiller's "Scheduling Policy Statement" and "Conference Information Report" from the Court's website at <http://www.paed.uscourts.gov>. Counsel should review the Scheduling Policy Statement before completing the Conference Information Report and bring the completed Conference Information Report to the Conference.

BY THE COURT:

Berle M. Schiller, J.